

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

JOHN J. DENNISON, on behalf of himself and
all others similarly situated,

Plaintiff,

v.

MONEY LIFE RETIREMENT INCOME SECURITY
PLAN FOR EMPLOYEES, MONEY LIFE
INSURANCE COMPANY and the ADMINISTRATOR
of such plan,

Defendants.

ORDER

10-cv-338-bbc

In this proposed class action brought under the Employment Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001-1461, plaintiff John Dennison contends that defendants MONEY Life Retirement Income Security Plan for Employees, MONEY Life Insurance Company and the administrator of the plan violated ERISA by retroactively modifying the discount rate used to calculate lump sum payouts of plaintiff's lifetime annuity benefits, thereby reducing his benefits under the plans. On October 14, 2011, I certified a class under Fed. R. Civ. P. 23(b)(1) or (b)(2) and directed the parties to consult and inform the court whether they believed it was necessary to provide notice to the class members. The

parties have responded jointly, stating that they both believe notice is unnecessary in this case. Dkt. #98.

It is the court's duty to determine whether notice is proper for class actions certified under Rule 23(b)(1) or (b)(2). Fed. R. Civ. P. 23(c)(2)(A) ("For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class."). As I explained in a previous case,

When Rule 23 was amended in 2003 to provide explicitly for a permissive notice provision for classes such as this one certified under Rule 23(b)(1) or (b)(2), it was to emphasize that members of these types of class actions "have interests that may deserve protection by notice." To decide whether notice is proper in such actions, the court should "balanc[e] the risk that notice costs may deter the pursuit of class relief against the benefits of notice."

Ruppert v. Alliant Energy Cash Balance Pension Plan, 255 F.R.D. 628, 637-38 (W.D. Wis. 2009) (quoting Fed. R. Civ. P. 23, advisory committee note of 2003).

I agree with the parties that notice is not necessary at this stage of the case. The class members have no right to request exclusion from a Rule 23(b)(1) or (b)(2) class, no one has suggested any interests of the class members that would be protected by notice and the cost of notice could be significant. However, depending on the outcome of this case, it may be necessary at a later date to provide notice to class members who have a right to recalculation of their lump sum benefits. That issue can be addressed if and when it arises.

ORDER

IT IS ORDERED that the stipulation filed by plaintiff John Dennison and defendants MONY Life Retirement Income Security Plan for Employees, MONY Life Insurance Company and the administrator of the plan, dkt. #98, is ACCEPTED. The parties are not required to provide notice to class members at this time.

Entered this 31st day of October, 2011.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge